



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

August 6, 1991
AO-91-14

Kevin J. Stanton, Esq.
Assistant Vice President and Counsel
Shawmut Bank, N.A.
One Federal Street
Boston, MA 02211

Re: Waiver of Minimal Negative Balances

Dear Mr. Stanton:

This letter is in response to your April 5, 1990, letter to Michael Karafotias of this Office requesting an advisory opinion on behalf of Shawmut Bank, N.A. (the "Bank") regarding its proposed procedure on the waiver of minimal negative balances resulting from fees assessed against zero-balance accounts maintained by political committees (hereinafter "Committees") formed on behalf of a candidate or candidates for public office.¹

You have stated that the Bank has recently encountered the problem of how to handle the collection of minimal negative balances on Committee accounts from the automatic assessment of service charges on zero-balance accounts. As an example, you mention your conversation with Mr. Karafotias regarding a negative balance or overdraft of \$18.06 on one Committee's account. You propose that the Bank handle small overdrafts for such Committee accounts in much the same way as it handles small overdrafts in other non-Committee accounts.

For minimal negative balances on Committee accounts which are the result of the assessment of service fees and which have

¹ For the purpose of this opinion it is assumed that a minimal negative balance is a negative balance that is less than or equal to -\$100.00. Also, it should be noted that this opinion addresses only the issue of minimal negative balances created by automatic assessments of zero balance accounts. It does not address the issues raised by the Bank's honoring a check against insufficient funds nor the Bank's waiving significant negative balances (i.e., balances greater than -\$100.00).

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not been collected after telephoning and writing the depositor, the Bank would clear the account by eliminating the resulting negative balances. The Bank would then balance the cost of collection of such fees against the outstanding fees owed to the Bank by the Committee. If the cost of collection were to exceed the amount of the negative balance, the Bank would then clear the account by restoring it to a zero balance and then submit a negative report on the account holder to the National Check Protection Service (the "NCPS"). This procedure would be followed for all Committees without regard to their political objectives or, it is assumed, affiliation. Additionally, the Bank would pursue any Committee which owed the Bank significant service charges.

You note that the outlined procedure differs from the procedure followed for non-Committee accounts in only one respect. For non-Committee accounts the decision to waive fees or to report the account holder to the NCPS is based on account history, the Bank's business relationship with the account holder, and similar subjective factors. Under the proposed procedure for Committee accounts, the Bank would automatically submit the negative report to the NCPS, without reference to the kind of subjective factors it would have considered for a non-Committee account.

Massachusetts law prohibits all banks from making contributions of anything of value to candidates for Massachusetts political office or to their political committees. Specifically, M.G.L. c.55, s.8 provides, in pertinent part:

No corporation carrying on the business of a bank, trust, surety, indemnity [or] safe deposit . . . and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party (emphasis supplied).

In a 1980 opinion, the Attorney General considered the extent to which a corporation may make goods or services available to political committees. See Op. Atty. Gen., Nov. 6, 1980. In that opinion, the Attorney General concluded that the critical phrase "other valuable thing" (also referred to as "anything of value") must be read in conjunction with the definition of "contribution" in M.G.L. c.55, s.1 which includes any "discount or rebate not available to other candidates for the same office and to the general public."

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Reviewing these two sections of Chapter 55, the Attorney General concluded:

It is my opinion that corporations may not offer those goods and services without charge and must charge a rate such that no discount or rebate is offered to any candidate or committee which is not available to other candidates for the same office and to the general public. Op. Atty. Gen, Id at 121.

It is the opinion of this Office that the Bank's proposal to waive minimal negative balances is sufficiently analogous to the rebate or discount discussed by the Attorney General. Admittedly, the Bank's procedures will be initiated by the Bank based upon the existence of a minimal negative balance whereas a rebate or discount is an inducement offered to a customer. However, the Bank's waiver procedure, like the rebate or discount, will be uniformly applied to all political committees with minimal negative balances regardless of political affiliation or objective and is also made available to the general public. Although Committee accounts will be treated somewhat differently from general public accounts (i.e., the automatic referral to the NCPS), the difference is a minor one and narrowly tailored to avoid the appearance of political favoritism by the Bank which would constitute a violation of M.G.L. c.55, s.8.

Additionally, I note that the procedure proposed by the Bank is in fact based upon existing procedures at the Bank that are part of the normal course of conducting the Bank's business.² Therefore, it is the opinion of this Office that such a procedure would "not involve corporate expenditures specifically designed to influence the electoral process". Op. Atty. Gen., Id at 122-123 quoting First National Bank of Boston v. Bellotti, 371 Mass. 773, 789 (1977) reversed on other grounds, 435 U.S. 765 (1978). As a result, the provisions of M.G.L. c. 55, s.8 may not even be implicated. See Op. Atty. Gen., Id at 122-123 (corporate employees may perform volunteer political work during normal working hours if a corporation generally allows employees to perform non-business functions during normal working hours.) While not completely applicable to this situation, I note that the Bank's proposed procedures are also consistent with the Office's regulations regarding the settlement of corporate debts. See 970 CMR 1.03.

² If the Bank were to treat the accounts of political committees differently from the accounts of other customers, the constitutional rights of such committees would be implicated. Therefore, the Bank's proposed procedures appear consistent not only with its normal business practices and M.G.L. c.55 but also with constitutional considerations.

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For the above reasons, it is the opinion of this Office that the Bank may implement its proposal regarding minimal negative balances resulting from automatic assessment of service charges on zero-balance accounts.

This opinion has been rendered solely on the basis of the representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this Office should you have additional questions.

Very truly yours,

Mary F. McTigue

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